EXHIBIT E
TO THE
AFFIDAVIT OF THOMAS H. BELKNAP, JR.

In The Matter Of:

FAR EASTERN SHIPPING CO. PLC,.v.
SEA TRANSPORT CONTRACTORS

March 4, 2008

CONFERENCE
SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK., NY 10007
212-805-0300

Original File 834UFARC.txt, Pages 1-38

Word Index included with this Min-U-Script®

834UFARC
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

FAR EASTERN SHIPPING CO. PLC,

Plaintiff,

v. 07 CV 9887(PAC)

SEA TRANSPORT CONTRACTORS LIMITED, et al.,

Defendants.

----------x

New York, N.Y.
March 4, 2008
11:30 a.m.

Before:

HON. PAUL A. CROTTY

District Judge

APPEARANCES

BLANK ROME LLP
Attorneys for Plaintiff
BY: THOMAS HUNT BELKNAP, JR.

CHALOS, O'CONNOR & DUFFY, LLP
Attorneys for Defendants
BY: OWEN FRANCIS DUFFY, III

THE DEPUTY CLERK: Far Eastern Shipping Co. PLC. v. Sea Transport Contractors Limited, et al., docket No. 07 CV 9887.

Will plaintiff please state your appearance for the record.

MR. BELKNAP: Tom Belknap, from Blank Rome, your Honor.

THE COURT: Good morning.

MR. DUFFY: Your Honor, Owen Duffy, from Chalos, O'Connor & Duffy, for the defendants Sea Transport Contractors, Marachart, Sword Trading, Ambient Shipholding and Tough Trader Maritime.

THE COURT: You are a busy man this morning.

Mr. Belknap, before we get started, I am reading the complaint at paragraphs 10 and 11. This is your verified amended complaint. What exactly is the consignee's complaint against your client? Looking at 10 and 11, 10 says that you can deliver the rice that was loaded in China anyplace in Africa.

Paragraph 11 says that the rice loaded in India had to go to Loma Togo.

As I read this, in paragraph 12, it suggests that some of the rice that should have been unloaded in Togo was in fact unloaded on the Ivory Coast, but other than that, maybe you can tell me what exactly is the dispute between the consignee and the shipowner.

MR. BELKNAP: The dispute, your Honor, is for misdelivery of the cargo which the cargo interests claim resulted in their not receiving the cargo. I will confess that I did not go back and look at the documents on that particular part of the claim in preparation for today's hearing, but my recollection is that there were instructions given by the charterer to deliver the bills of lading to the cargo at one particular port. The instructions were subsequently amended, and there was some question about whether the instructions that were given were appropriate or not.

THE COURT: I am reading the allegations of the complaint which is all I have before me, and it says with regard to the goods loaded in China had provided for discharge at any African port.

And then in paragraph 11 it says that the goods loaded in India -- and they list the five bills of lading -- all for discharge in Loma Togo.

That is 10 and 11, right?

MR. BELKNAP: Yes.

THE COURT: And then 12 says that some of the goods that were for Loma Togo were in fact unloaded in the Ivory Coast. And the change that was made in the direction of the ship was, it was supposed to go to Douala, Cameroon, but the vessel was redirected to Loma Togo. So what exactly is the

claim of the consignee against your company, against the Far Eastern Shipping Company?

MR. BELKNAP: I'm sorry. If I may just go back and make sure that I am clear before I answer the question, your Honor.

THE COURT: You may want to take a look at paragraphs 10, 11, 12 and 24.

It is difficult for me to ascertain exactly what the dispute is.

MR. BELKNAP: Your Honor, what I am remembering is that the actual claim is not under every one of the bills of lading as identified in paragraph 11, and I think that's where the confusion is.

I am sorry that I don't have this clearly at hand. I should have. But there's a number of bills of lading that are identified in paragraph 11.

THE COURT: Right. Some of those bills of lading, apparently, the cargo was destined for Loma Togo and was discharged in the Ivory Coast, at least two of the bills of lading, 03 and 05.

MR. BELKNAP: Now, rereading the complaint, I am getting a little clearer.

The original instructions were as set out in paragraph 11 of the complaint.

Paragraph 12 states that, as to a couple of bills of

Page 5

lading, numbers 03 and 05, instructions were revised and the cargo was discharged in the Ivory Coast against the bills of lading and letters of indemnity that were issued by the charterer, STC.

STC, as in paragraph 13, then ordered the vessel to Douala, Cameroon to discharge the remaining cargo. Subsequently, they changed their instructions to discharge the cargo in Loma Togo.

THE COURT: Which is what the bills of lading call for. It said any port in Africa and Loma. So other than the misdelivery which is set forth in paragraph 11 -- I am trying to find out what is the dispute. Maybe it doesn't make any difference, but I've got an inquiring mind here.

MR. BELKNAP: I understand. To be honest, I would have to go back to the documents.

THE COURT: Can you tell me, Mr. Belknap, what is the status of the arbitration that commenced on April 13, 2007 by the consignees against your client?

MR. BELKNAP: It is the cargo interests against our client. It is ongoing. The parties have both nominated arbitrators, and I understand that is where it stands right now.

THE COURT: It says here it started on April 13, 2007. So you are coming up on the one-year anniversary. Is that the normal span of time for arbitration?

Page 6

MR. BELKNAP: I believe it is, as a matter of fact.

THE COURT: They don't do any better than we do here in the Southern District?

MR. BELKNAP: I try to tell my clients as often as possible that we do much better here in New York than in London.

THE COURT: Mr. Belknap, what is the position of your client in this arbitration proceeding?

MR. BELKNAP: The position is that there is no liability or that the liability should be on the part of the charterer, STC, and that they should be responsible for any misdelivery.

THE COURT: But they are not parties to this arbitration?

MR. BELKNAP: They are not parties to this arbitration, that's correct. Our client has an arbitration in --

THE COURT: That is covered in paragraphs 64 and 65, correct. Arbitration to London, Hyde Park. 64 deals with the arbitration under the charter and 65 deals with the letters of indemnity which are before the high court of justice.

MR. BELKNAP: That's correct, Judge.

THE COURT: You have not commenced either action?

MR. BELKNAP: That's correct.

THE COURT: Why not?

Page 7

MR. BELKNAP: The reason is that we have no security claim and both arbitration and the litigation in London are extremely expensive. It is actually quite common not to commence an action until there is some prospect of actually recovering on an award if one is given.

THE COURT: Is that a way of saying your claim against STC in the charter arbitration and in the indemnity before the high court of justice are not ripe?

MR. BELKNAP: No, your Honor.

It is a way of saying that our clients are in a position right now of facing a very large liability cargo interest that they may very well never be able to recover against the charterers. And the only way that they are going to be able to recover against the charterers is if they can actually obtain security for their claims, because having an arbitration award that is backed by no money whatsoever is of no value whatsoever.

It would be a very expensive prospect to obtain an arbitration award now. They could commence arbitration today, but it is our position that they have a presently ripe claim if they were to do so, but there is very little point in commencing an arbitration to obtain an award that has no prospect of being recovered upon, and that is the position that they are in right now.

THE COURT: Mr. Duffy, why don't you tell me what your

Page 8

position is. As I read your papers, you have two positions. As to STC, you say that the claims are not ripe and so they are not maritime claims and subject to Rule B; the bulk of the claim is not ripe?

MR. DUFFY: Yes.

THE COURT: With respect to Marachart, Sword, Ambient and Tough Trader, they are not alter egos for STC?

MR. DUFFY: Correct, your Honor.

I believe, just listening to you for a few minutes, you have read and properly understand the papers.

Just to put the whole argument in context, I think as Mr. Belknap said, they don't want to go to arbitration against anybody in London until they have security ahead of time. And that is the whole gist of this Rule B process, that that has been initiated in the United States. It is part of one of the fundamental problems. It reverses the traditional roles when you go ahead and you seek and get your judgment and then try to enforce it.

If you look at this complaint, this complaint is fairly large, 70-some odd allegations. But all through the complaint, what are we looking at? We are looking at a Russian plaintiff, a foreign vessel. The defendant Marachart is a Cyprus company. The other companies are Liberian or Singapore. We are dealing with claims asserted by Swiss banks where they initiated proceedings in Singapore and then they go and file an

arbitration in London.
What is the connection to New York? Why are we here in this court in the United States today?
And the only reason is because of Rule B. And the only reason is that they were able to get a Rule B maritime writ of attachment, and they did establish some quasi in rem jurisdiction over a limited amount of money belonging to the defendants Tough Trader and Ambient Shipholding.
THE COURT: That is about $250,000?
MR. DUFFY: Correct, your Honor. And that's the substance of this Court's jurisdiction right now. That is the only basis for its jurisdiction over any of the parties.
Now, they come in with this claim that they have not initiated in London against us yet, for which they have incurred no liability in London. I would concede to you that, yes, there are some ripe claims in there. There's the claim for cargo damage of about $164,000 --
THE COURT: You have conceded about 1.5 million.
MR. DUFFY: I conceded about 1.5 million. That's part of the problem. Then they inflate it up into a $12 million claim.
THE COURT: It is only 11.
MR. DUFFY: It is 11.9.
THE COURT: You are rounding up.
MR. DUFFY: It sounds better.

And they sue their contractual party STC, and then they also sue Marachart, Sword Trading, Ambient and Tough Trader on the alter ego theory.
And I think one of the key points of this, to really understand the alter ego argument is that if you look at their complaint -- and it is paragraph 64 -- and the basis of the complaint against the alter ego defendants is by virtue of their roles as alter egos and/or principals of STC, any arbitration award issued against STC in connection with this dispute is equally binding upon Marachart, Sword, Ambient and/or Tough Trader.
Who says? Nobody has made that determination yet. That is just an allegation.
And they try to get a prejudgment attachment of property over those parties based on that prejudgment attachment, which they will have to get an arbitration award and have to prove that they are in fact the alter egos. That's the way it should work, and that is a contingent claim as well.
That is the problem with some of the cases that have been decided in this court. And then if you read my papers, I am very critical of Tideline and all of the other cases that went through this. I think that they are putting the cart before the horse and they shouldn't be allowing a party to come in and attach an alter ego's assets.
THE COURT: Even in Tideline, Judge Wood, strangely

enough, while you were highly critical of Judge Wood and her decision, even there she didn't allow the piercing of the veil.
MR. DUFFY: Yes, your Honor, but I believe that was the case that opened the floodgates for the other cases that came along, and they all followed suit.
I think probably Judge Sweet was the one that at least put a little bit of a cork in the dam. And if you read his decision he said, while I am going to go along with what everybody else is doing, I am going to go along with that standard, but I want some factual allegations that there was domination. I want some factual allegations that show the elemental principle of alter ego, and he didn't find that in the Dolco case.
THE COURT: Let me ask you a question. Starting with paragraph 32 and going through paragraph 60 -- not 61, which is the conclusion -- but what are the allegations in the complaint? Why are they inadequate to show that the corporate veil should not be pierced here? They show common ownership, common shareholders, common directors, common officers, a common location, and I don't think you doubt that?
MR. DUFFY: Not as far as Marachart and the STC, I do not.
THE COURT: Why isn't that enough to pierce the veil?
MR. DUFFY: Because if you read Mr. Raisis' declaration, this is the way business works. His father had a

company. They operated that company and a couple of businesses.
He is a young man. He decides, well, I'm going to start another company and get into a different venture, and, yes, we will have the same directors and everybody else, but where is the disregard of corporate formalities?
THE COURT: We have three ships, each of which is separately incorporated as its own company.
MR. DUFFY: Correct, your Honor.
THE COURT: Marachart which is a manager and STC which is a separate charterer. I guess it charters vessels independently --
MR. DUFFY: It is a chartering company, as I have heard people call it.
If you look at it in that light, I will concede you the point that they have established directors of Marachart -- there is a connection between Marachart and STC, no doubt about it.
If you look at the way this claim goes, he wants to go in a triangle. He wants to pierce the veil of STC to go up to Marachart. Then he wants to pierce down into companies that are managed, whose vessels are managed by Marachart. And then he wants to come back and hit at STC again and say, these three companies over here are the dominating companies.
There is no allegation in the complaint that any of

Page 13

those even had anything to do with the vessel. There is no allegation in the complaint that any of those companies ever had anything to do with STC at all.

THE COURT: Are you familiar with the analogy of Tinkers to Evers to Chance?

MR. DUFFY: Yes, I am, your Honor.

THE COURT: That's an old baseball analogy.

MR. DUFFY: They were very good at it, but I think that the ball dropped somewhere along the way here.

THE COURT: But the allegations here are that Marachart dominates the affairs of the three individual ships -- Ambient, Tough and Sword.

MR. DUFFY: That's an allegation.

THE COURT: That's an allegation.

And then because STC and Marachart are the same company --

MR. DUFFY: That's the allegation.

THE COURT: Again, that is the allegation.

Therefore, in going against STC, you get Marachart and you also get the three ships managed by Marachart.

MR. DUFFY: Yes, your Honor.

THE COURT: That is the line that Mr. Belknap is following. Now, what is wrong with that?

MR. DUFFY: In baseball maybe you will get the out at the end, but there is a disconnect between Sword, Ambient and

Page 14

Tough Trader. They are single-owner vessel companies. In order to have alter ego liability, he has to prove that those companies committed a fraud or that they dominated the subsidiary company. That is the essence of alter ego liability in this circuit, and he cannot prove that and he has not alleged it.

THE COURT: All right. I understand your point.

What do you say about why Mr. Belknap or why FESCO is not entitled to an attachment in the amount of $11.9 million?

MR. DUFFY: Your Honor, that is all a contingent liability. If you read the complaint, he says, look, our other ship went to Singapore, somebody arrested, we had to put up a bond. What happened? They put up a bond of $6 million. The court vacated it. It was a wrongful arrest. It was not proper. They are not out anything, maybe the legal fees and maybe that's what I am giving $1.5 million, but they didn't incur any liability in Singapore.

Then they said, we are coming here in London. They haven't posted any security in London. There is no security. This thing has been going on for a year and they haven't done anything yet.

THE COURT: Do you know what is going on in the high court of Singapore? I gather one of the consignee's bank took an appeal.

MR. DUFFY: I am not a party to that action.

Page 15

THE COURT: Do you know, Mr. Belknap?

MR. BELKNAP: That is correct, your Honor. There has been an appeal taken.

THE COURT: What is the status of the appeal? Recently there was an argument on it, but I can't say exactly when but it is still awaiting decision.

MR. DUFFY: I realize the alter ego things are a little bit heady and courts have struggled with them. Let me just make this a little bit easy for you.

THE COURT: Anything you can do to make it simple for me, I would appreciate it, but I don't think it was that heady to be honest with you, but go ahead.

MR. DUFFY: I do, and I think it has kind of skirted the line a little bit too thin, and I think sooner or later somebody has to put a stop to it or otherwise we are going do run into trouble. But this case is a little bit easier.

If you look at my reply papers, I cited a case, Blue Isle Navigation and also the Dolco investment case, and they both stand for the proposition -- and this is even under Aqua Stoli's minimal law requirements -- the property of the defendant has not been found in the district, the attachment must be vacated and the complaint dismissed.

You consider in this case, STC, they have not attached any property of STC, so they don't have any jurisdiction over --

Page 16

THE COURT: I understand that argument, but it doesn't carry any weight with me, Mr. Duffy, because under Mr. Belknap's theory there is no difference between STC and Marachart and the Raisis companies. I understand your argument, but Mr. Belknap would say, listen, it is all one big ball of wax, all five of those defendants are one and the same. They are all together. If I can go after one, I can go after them all.

MR. DUFFY: I think when you stretch it to Ambient and Tough Trader, that is stretching it way too far. There is no evidence that these companies had anything to do with STC, that they had anything to do with the operations of STC. That is the whole idea of why people start separate companies for separate businesses.

There is a presumption of separateness and you just can't overcome it by allegations and just go through -- it is almost like I sued General Motors and said, who owns the stock of General Motors. Am I allowed to go after them as well? It is just going way too far.

THE COURT: Thank you, Mr. Duffy.

Let's take these things in order.

MR. BELKNAP: I am sorry to interrupt you.

You had asked the question before about the nature of the cargo claims, and I had a chance to look back through the complaint a little bit and find what I was looking for before,

which is in paragraph 21.

There is a block of quotation, and this is actually taken from the consignee's own papers that they submitted in the Singapore action where they described their claim. And I think, obviously, they have done it better than I did in my attempt to answer your question before.

THE COURT: Yes. I tried to parse this last night, but there are so many "ands" and "ors" in it that I gave up.

MR. DUFFY: I accept that it is not clear. I think the intent was to throw in a number of different causes of action. The things are for breach of charter party, reversion, wrongful detention --

THE COURT: Those are just words. I want to know, in substance, in laymen's language exactly what the complaint is because one bill of lading says deliver everything to Africa. The other one says parts of anything can be delivered to Africa -- that's the Chinese goods. And the Indian goods say deliver only to Loma Togo.

Since they were delivered to Loma Togo, I said to myself, well, what is the precise bounds of the dispute, and this is just lawyers' part -- "and or contained, and or conversion and/or wrongful detention and/or wrongful interference, discharge the cargo of rice from none genuine -- it doesn't tell me anything at all. I appreciate your offering it to me, but it doesn't really answer my question.

discharging the cargo, they will indemnify you and hold you harmless with respect to any liability, loss, damage or expense --

THE COURT: Have you suffered any liability or loss?

MR. BELKNAP: Yes. This is an important point, and this is the point that I raised in our opposition papers. I regret having cited a number of English decisions, but this is actually an issue of English law.

Your Honor, if I can refer you to point 2 of our opposition to the motion relating to Sea Transport's motion and, particularly, pages 4 and 5, and this particular point is actually addressed in a decision that is referred to on page 7.

In this case, the Caroline P and the other case cited, Basma v. Larson, the court, in a different context admittedly, considers this identical situation of whether an indemnity against liability is a present cause of action or a future cause of action. And the court says, if the indemnity is an indemnity against liability as it was held to be in Basma v. Larson, the cause of action will come into existence when A here incurs liability to B, the cargo interests --

THE COURT: Isn't there something that is a little bit askew here? You are taking the position in regard to the arbitration that you are engaged in in London that you owe nothing and yet you want to take 10 million or 11 million dollars, almost 12 million dollars from what you say is a

MR. BELKNAP: If it would help the Court I can supplement that.

THE COURT: That's OK. I don't think its outcome is determinative.

Tell me why, in light of these decisions by Judge Karas and other judges similarly minded -- Judge Kaplan, Judge Haight, Judge Scheindlin -- who suggest that claims for indemnity, unripe claims for indemnity are not the kind of actions captured within Rule B of the maritime rules.

MR. BELKNAP: There is one very obvious explanation, and it is one that I think was strikingly absent from any reference in the defendants' papers at all, which is a document called the letter of indemnity. It was a document that was issued by the charterers to our client, specifically in order to obtain discharge of these cargos pursuant to their instructions.

There are copies of them that are attached to Exhibit 3 to my affidavit that was submitted and, unfortunately, it is not the clearest copy but I think it is readable. If it is not, it is repeated in other places and I can refer you to them.

Probably the easiest thing to do is read paragraphs 1, 2, 3 and I will summarize them here.

Paragraph 1 says:

In consideration for following instructions and

thinly capitalized company which will probably shove it into bankruptcy, when your position throughout has been, I have no liability to the cargo interests. Why are you entitled to $11 million? What about that language in the cases like the Greenwich case that suggests that a court in admiralty has equitable powers to adjust the size and the amount that you are attaching?

MR. BELKNAP: Your Honor, the only reason that we are in the situation that we are in -- and when I say "we," I mean FESCO, of course is because FESCO followed instructions given to it by the charterer as far as discharging the cargo that were different and inconsistent with the bills of lading.

In consideration for doing so they obtained from the charterer this letter of indemnity. The letter of indemnity was specifically designed to address this very situation where because of one reason or another, whether it is a valid claim or an invalid claim, the cargo interests --

THE COURT: So you can maintain that at zero, and you get $10 million from Duffy's clients?

MR. BELKNAP: Absolutely, and to be perfectly honest, we are doing the charterer a favor by taking that position.

THE COURT: I don't think it is a favor.

MR. BELKNAP: If they would like to defend themselves, they are perfectly entitled to come in and defend themselves, what they should be doing. This says that if there is even a

Page 21

threat of an arrest of our client's vessel in respect of cargo claims, that STC is required to post the security directly to the cargo interests. That is what paragraph 3 of the letter of indemnity says.

THE COURT: How much money is your client out of?

MR. BELKNAP: Out of pocket, I think the 1.5 million is probably about right, but they are facing liability to the cargo interests of the full amount of 11 point something million dollars.

THE COURT: Have you reached any conclusion as to why you have not been successful in your attachment proceedings against Sea Transport?

MR. BELKNAP: Our conclusion is -- this is based on our market research -- that STC has stopped trading and essentially wrapped up its affairs.

THE COURT: You have not been successful against Marachart, Sea Transport or Sword, is that correct?

MR. BELKNAP: That's correct.

To be honest, my suspicion is that Marachart has gotten wind of this and has figured out some other way to transfer funds. I suspect that we probably won't attach any further funds of any of the other defendants either because they have figured a way to transfer money other than by --

THE COURT: -- transiting the American banking system of --

Page 22

MR. BELKNAP: -- transiting money in some other currency or, more likely, they have set up some kind of paying agent who can pay and receive funds on their behalf. I have certainly seen that happen many times before.

THE COURT: Let me ask another question, and it is not relevant to this particular case, but let me get your views on it.

How long do you think the writ of attachment ought to last because under the CPLR, it lasts for 60 days or 90 days and then it expires?

MR. BELKNAP: Your Honor, I don't think that the CPLR would have any bearing on this at all.

THE COURT: No, I mean writ of attachment.

MR. BELKNAP: As long as there is due diligence to try to serve the writ, which we could do in half a day, I don't see any reason why it wouldn't go on indefinitely. There is no real reason why it shouldn't. I can't think of a single reason why. Obviously this a situation where, in order to obtain security, which is after all the purpose of Rule B in the first place, the plaintiff should be given the opportunity to continue to serve the writ. There is no reason why the reason for obtaining the attachment is any less valid one month or two months of even a year from now than it is today.

THE COURT: If you still had the underlying exposure, but the underlying claim is still valid --

Page 23

MR. BELKNAP: That is exactly right.

THE COURT: Mr. Duffy, what do you say? You are on both sides of this issue.

MR. DUFFY: On that specific question, your Honor?

THE COURT: Yes.

MR. DUFFY: I honestly know that there is no rule of law that says how long a writ of attachment could stay in effect, but I did have the issue a long time ago in a case, American Bulk Transport, I believe. And I am not familiar with all of the details, but I know that the judge in that case looked at the CPLR for guidance and said, you can't have this thing going on forever. I think he said it was either 45 or 90 days and it was vacated after that.

THE COURT: What about Mr. Belknap's point which makes some sense, which is, so long as the underlying claim is valid anyplace you can continue to try to attach assets?

MR. DUFFY: That is preposterous. He is coming in here with a claim. He has not met the prerequisites for Aqua Stoli.

THE COURT: Assume that he does.

MR. DUFFY: That he is going to keep a net up forever? I don't think that you should be able to do that, your Honor. I think it is absurd.

THE COURT: It is off the point.

MR. DUFFY: If I may, I would just like to address the

Page 24

point on the LOIs and the underlying claim --

THE COURT: I have not finished with Mr. Belknap on that. I interrupted him on an excursion of my own, and then I got you involved but, Mr. Belknap, go ahead.

MR. BELKNAP: There was this jurisdiction point.

I think that the arguments that the defendants are making about the fact that there is a lack of jurisdiction here because we haven't actually attached any funds of Marachart, I think that your Honor anticipated my argument. The whole point of alter ego --

THE COURT: You said that there is no difference.

MR. BELKNAP: A equals B and B equals C and A equals C and that is the bottom line.

Specific allegations that are contained in the complaint, your Honor, certainly did note a number of them relating to the fact that there were common directors, common officers, common shareholders, common officers -- there are other allegations, too.

I certainly agree that there may be some circumstances where companies will have common directors and common shareholders and still be separate entities, but it is a matter of what the parties do with those entities and how they are actually run. And if you look at the other allegations that are contained here about things like one party making payments for the other or one party guaranteeing obligations --

Page 25

THE COURT: I read the allegations about piercing the veil. That is Count 2. It goes from paragraph 32 up to paragraph 60. 61 is all conclusions.

But I notice that there is an awful lot of emphasis on the work that Sword and Ambient and Tough and their relationship with Marachart. There is nothing about Sword, Ambient and Tough in STC. The hook has got to be through Marachart.

MR. BELKNAP: I concede that now, your Honor, based on what I know now. We are still at pre-discovery stage.

THE COURT: That's right. I am looking at the allegations of the complaint, which is what Aqua Stoli told me to look at.

With regard to Sword, Ambient and Tough, there is nothing in those allegations that deal with STC --

MR. BELKNAP: I agree.

THE COURT: The hook is between Marachart and STC that I have been able to find here, unless you are going to tell me something different. Marachart made one of the charter payments that was due and owing to your client, FESCO. But other than that, what do we have?

MR. BELKNAP: Well, that is a hook.

THE COURT: That is one payment.

MR. BELKNAP: Yes. As directed by the authorities, the other things that we have talked about on the shareholders,

Page 26

common directors, those are relevant factors to be considered.

THE COURT: But they are not outcome determinative.

MR. BELKNAP: They are not, but when you factor in with others, they are important.

THE COURT: The others? I have cited one. What do you have besides that one?

MR. BELKNAP: The other one in particular, your Honor, relates to -- if I can find the paragraphs.

THE COURT: Paragraph 56 might come close, but I don't think that is substantive. What are the purposes of the revolving loan from the bank for the three ships, to pay off EFG Eurobank which you point out, by coincidence, is the same where payments were made, but that is hardly --

MR. BELKNAP: Your Honor, there are a couple of others.

If we look at paragraph 40 of the complaint, we have Mr. Raisis in another declaration that he gave in connection with another matter not related to this dispute. He simply said that he was the controlling mind behind --

THE COURT: He could be the controlling mind behind all of them.

MR. BELKNAP: I believe he is.

THE COURT: So what? Just because he believes he's the controlling mind behind all of them, it doesn't mean that he hasn't observed the appropriate forms. One person like

Page 2

Warren Buffet could be the controlling mind behind millions of different dollars of investments. That doesn't mean that you ignore his investments and go after him individually.

MR. BELKNAP: It might. It depends on how he runs his business.

And paragraph 60 was the one that I was going to refer you to, and it relates to, again, this other matter that we obtained the affidavit of Mr. Raisis where he is giving advice to other parties about how to use STC as a chartering party in order to avoid having assets exposed to attachment.

Besides using one company for that kind of purpose, one of the other factors that should be weighed is whether a company is properly capitalized to meet its obligations.

THE COURT: Where do you have the allegation that it is not properly capitalized, other than saying it? Where is that?

MR. BELKNAP: With due respect, I don't believe that we need to make a detailed --

THE COURT: You can just say it and then we can attach assets?

MR. BELKNAP: No, your Honor.

The collection of allegations here, the rules as I understand it based on Tideline and others is that the complaint must create an inference, and that is the term that is used in the case, an "inference" that the parties are alter

Page 2

egos.

Now, obviously, without having had any discovery at all, I think we have done much more than simply raise an inference, particularly when you measure this case compared to the list of cases that we have cited in our brief.

There were cases where the single allegation that one party has made a payment for another is sufficient to have support at this stage in the proceedings as an alter ego complaint.

This is not a trial on the merits. This is simply a matter of whether we have stated enough to support a claim to allow us to go forward.

THE COURT: Yes. I understand that. It is before any liability has been established and before anybody has been heard, you get to seize assets of people on a theory that all you have said is the same, that under Aqua Stoli I am told I have to accept that.

MR. BELKNAP: Based on the case law, the allegations we have made in the complaint, I think, are much more substantial than many others that have already been affirmed.

THE COURT: Anything else to say, Mr. Belknap, before I hear from Mr. Duffy?

MR. BELKNAP: Not at the moment, your Honor.

THE COURT: Thank you very much.

Mr. Duffy, you want to talk about the letters of

Page 29

indemnity.
MR. DUFFY: Yes, just a little bit to address the underlying claim, your curiosity. I don't believe it is outcome determinative in a case like this.
But I do know that STC -- and I am looking through some early e-mails which first came in -- they strongly deny the allegations in the complaint about the wrongful discharge of cargo in Loma.
And one of the points that he made early on was that they have cited selectively from the letters of indemnity. And if you look at the one letter of indemnity, they specifically recite that the cargo was shipped for delivery at the Port of Loma Togo. That's where the cargo was always destined. Apparently, some of the consignee banks got involved and there was a change of orders. No one accepted those orders, but the owners didn't give those orders.
The cargo was discharged in the port that it was consigned to. The letters of indemnity were issued because the bills of lading had not been produced and they wanted to deliver the cargo.
It was also discharged because they went to court in Togo, and they got a court order that said this is the rightful place to discharge the cargo. Full stop. That's what happened. Now these people are coming back and alleging breaches of obligation on behalf of the vessel owner.

Page 30

We hotly dispute whether we have any liability under the letters of indemnity, and we also make the real point that the consignee's claim is probably bogus. They were not able to sustain an arrest in Singapore. The charter, the vessel owner, FESCO has not incurred any liability in London yet. So you can't restrain our assets for a contingent claim like that.
And I would answer any questions that you have on that.
THE COURT: Do you want to say anything in rebuttal to Mr. Belknap's arguments --
MR. BELKNAP: Very briefly, your Honor.
THE COURT: I haven't finished. I was right in the middle of the question.
Do you want to say anything about his arguments on piercing the veil?
MR. DUFFY: Yes, I would like to.
I would agree with you. The hook is Marachart, but I think that you have to look at the history of this case. They knew who Marachart was when they dealt with STC. They came in, and I think in Mr. Raisis's declaration, he tells what happened. When they wanted the letters of indemnity, this fellow from Marachart was going to issue them on behalf of STC.
THE COURT: And that was rejected? And they said, we want STC.
MR. DUFFY: We want STC. They wanted a corporate

Page 31

guarantee from Marachart or if they believed Marachart was the controlling mind or the dominant force, they would have requested a guaranty from them. They didn't. What they knew was, STC was a separate company. Marachart was a broker. And when you get to the hook of Marachart, Marachart has to be looked at in two separate blocks.
THE COURT: Marachart is a broker and ship manager, correct?
MR. DUFFY: They have two business operations, yes. They are a broker, and they are the exclusive broker for STC and they are exclusive because the same guy owns the both of them.
Then they have the ship management company. And the way the ship management companies operate -- they make a lot of allegations about the Raisis family owns this group and blah, blah. The way these things work is, these are all single ship owning companies that are owned by groups of investors, usually incorporated in Liberia or someplace else. They don't have any expertise or knowledge about running a ship. They give it to a ship manager to run, and it is really an investment vehicle for most people. They give it to a ship manager, and they say, you take care of all of the trading, all of the engineering and everything else like that. Provide us with a full accounting. We will take some profits and someday maybe we will decide to sell the ship.

Page 32

That's why you can't go through the local Maracharts to get to these people. They are trying to skip through and there's a disconnect. You cannot go through Sword, Ambient and Tough Trader.
To answer one question, you said they haven't attached anything at Sword. I think Mr. Raisis said that one of the companies is really out of business now. They sold their own investment, so probably they will never attach any money of that company. But the other two, they have attached money. But they have nothing to do with STC and cannot be held liable as alter egos of STC. You can't pierce, pierce, pierce all the way along the line.
THE COURT: I understand.
Mr. Belknap, I will give you the last word.
MR. BELKNAP: On the alter ego point, he has already said, counsel, that Marachart is the exclusive agent for STC. We know from the Raisis declaration that Marachart was doing all of the business for STC.
At the same time in his own declaration, Raisis says that STC was formed because Marachart didn't have all of the appropriate expertise to do the charter. Which is it? He is getting into a lot of factual rebuttal to the allegations that are made in the complaint, and if we are going to be arguing those kinds of facts, we should be entitled to get discovery on this issue.

Page 33

That's on the alter ego. That's all that I wanted to say, but I also very briefly want to go back to this letter of indemnity because I think paragraph 3 really makes the point very clearly. What it provides is that if in connection with the delivery of the cargo, the vessel is detained or should the arrest or detention thereof be threatened, then the party providing the letter of indemnity, which is STC, will provide security to the cargo interests directly whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

The point here is that you don't get to the question of are the merits claimed by the cargo interests valid or not. They are vehemently disputing that they are. We are vehemently disputing that they are. The fact remains that there is an arbitration against our client. We have spent a lot of money on it. We have exposure. We have an obligation undertaken from the charterer --

THE COURT: Why isn't that covered by some of the allegations as to which Mr. Duffy doesn't raise any dispute? Aren't they covered by those?

MR. BELKNAP: They absolutely are covered. And to be honest with you, I think the fact that he is not disputing it suggests he is accepting that at least to that extent the letter of indemnity does have an obligation or might.

But the fact of the matter is that, as far as what the

Page 34

obligation is, there is nothing in the letter of indemnity that requires us to pay it first. To the contrary, the letter of indemnity is very, very clear that it is supposed to be picked up by the charterer in the very first instance so that we, FESCO, is never in the position that they are in now, where they have to defend a claim, spend money and hope that they can recover against the charterer. That is the very point of this document right here.

THE COURT: First of all, I want to thank the parties for their excellent briefs and the oral argument.

I think I am going to join my brothers and sisters on the court -- Judges Karas, Haight, Kaplan, Scheindlin and Chin -- who recently in the last year and a half have issued a series of decisions that suggests that claims for indemnity which have not yet matured into the payment of funds are not appropriate for maritime indemnities.

I know that Mr. Belknap relies on Judge Hellerstein's decision in the Navalmar case, but I assume that Navalmar was simply because there arbitration had already commenced and there had been a partial award, but an award had been made. And there was, to use Judge Buchwald's decision, a degree of immediacy so it was no longer speculative. And in these circumstances, Judge Hellerstein denied vacatur on indemnity claims even though the occasions for indemnity had not yet arisen.

Page 35

I am also relying on the language or the teaching of the Second Circuit in the Patricia Hayes case and Greenwich Marine which talk about the inherent power of an admiralty court using its equitable powers to set the appropriate amount for attachment.

In light of the position of STC, Sea Transport Contractors, I am going to allow the attachment order in the amount of $1.9 million to continue. Otherwise, I find that the attachment in excess of $1.9 million is not appropriate in the circumstances.

With regard to the piercing the corporate veil, the allegations set forth in Count 2 of the complaint, the amended verified complaint, paragraphs 32 through 60, I have read the Aqua Stoli decision, and Aqua Stoli deals with a situation of what is appropriate for pleadings purposes under Rule B.

Judge Walker had to confront a tendency in the Southern District of New York to find a needs plus, in other words, that Rule B didn't contain all of the requirements for a maritime attachment and the district court judges could balance the needs of the parties, whether financial security is really needed and whether the inconvenience of the attachment outweighed the effectiveness of the attachment in terms of providing security to the attaching party. He said nothing at all about piercing the corporate veil, and so I think that question has not been addressed.

Page 36

I recognize there's a decision by Judge Wood and others which suggests that the Tideline case that I have referenced suggests that the pleadings requirements as set forth in Aqua Stoli apply equally to piercing the corporate veil.

I find, on the allegations of this particular complaint, that I don't have to make that determination as to whether or not Aqua Stoli set down new pleadings requirements for piercing the corporate veil or whether good cause or probable cause or some other standard has to be alleged because I find that the pleadings here with regard to alter ego and veil piercing are insufficient even under Aqua Stoli. They suggest a close working relationship between Marachart, Sword, Ambient and Tough Trader, but they are absolutely silent with regard to -- I'm sorry -- Sword, Ambient and Tough Trader and having anything to do with STC. The relationship between STC and Marachart is very, very limited, and I find it is insufficient to justify the attachment of assets that Marachart allegedly controls.

So I find that there is no basis for the attachment against Sword, Ambient and Tough. Inasmuch as there is an attachment of Ambient of some $4,000 and two attachments against Tough, one for 137,000 and 145,000, I am going to vacate both of those attachments. The order of attachment is limited to $1.9 million but can still proceed against STC,

although I agree with Mr. Belknap's very commonsensical practical analysis that, in light of the situation, that probably will not yield any positive results for Far Eastern Shipping Company.

That constitutes my disposition on this motion.

I will enter a brief order incorporating my remarks here, my decision delivered orally on the bench into a more formal order.

Anything else?

Mr. Belknap?

MR. BELKNAP: Just that I want to make certain there is a stay in effect. It is a 10-day stay, normal rules, to get instructions about what our client might want to do about the order.

MR. DUFFY: Your Honor, I believe that Rule 62, I think it is (d) that is applicable here, that if the Court enters an order that there's a stay of 10 days and there is authority status, maritime, for the proposition that it applies to decisions vacating an attachment.

THE COURT: Where is it in 62?

MR. DUFFY: Rule 62, I think it is (d).

THE COURT: "Stay of proceedings to enforce a judgment. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action" --

MR. DUFFY: It may be 62(a) then, your Honor.

THE COURT: "Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 10 days have passed after its entry." So you have 10 days.

MR. BELKNAP: Thank you, your Honor.

THE COURT: I am told by Mr. Ovalles, who reminds me of things, that you should order a copy of the transcript so that I can file the transcript with my order. So would you do that today?

MR. BELKNAP: Yes, your Honor.

THE COURT: Anything else, Mr. Duffy?

MR. DUFFY: No, your Honor.

Thank you, your Honor.

THE COURT: Thank you very much.

o 0 o